

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

ROBERT E. ZORN,	:	
Plaintiff	:	
	:	
v.	:	Docket No. 1:03-cv-314
	:	
STATE OF NEW YORK,	:	
WASHINGTON COUNTY SHERIFF'S	:	
DEPARTMENT, DEPUTY MICHAEL	:	
McWHORTER, TOWN OF HARTFORD,	:	
NEW YORK, and THE HARTFORD	:	
INSURANCE CO.	:	
Defendants	:	
_____	:	

RULING ON DEFENDANTS' MOTION TO DISMISS
(Paper 7)

Defendants Washington County Sheriff's Department and the Town of Hartford, New York move to dismiss Plaintiff's action for improper venue under FED. R. CIV. P. 12(b)(3) or, in the alternative, for transfer. (See Paper 7, p. 2) For reasons discussed below, Defendants' Motion to Dismiss is GRANTED.

BACKGROUND

This case arises out of a minor traffic accident that occurred on November 10, 2003. (Paper 1, p. 1) The accident involved Plaintiff and one other vehicle. (See id.) Deputy Michael McWhorter, also a defendant in this action, responded to the accident and issued Plaintiff a traffic citation. (See id.) Following the accident, Plaintiff proceeded to his home and upon arrival notified his insurance carrier, The Hartford Insurance Co. ("Hartford Insurance"), also a defendant in this

action. (Id.) Plaintiff instructed Hartford Insurance to make an immediate investigation, which Plaintiff alleges never occurred. (See id.)

Plaintiff filed this pro se complaint on November 19, 2003, alleging, inter alia, that all Defendants "worked in full orchestration against the plaintiff," violating his rights guaranteed by the Fourteenth Amendment to the United States Constitution. (See id. at p. 2) On December 9, 2003, Defendants Washington County Sheriff's Department and the Town of Hartford, New York filed a motion to dismiss for improper venue or, in the alternative, to transfer the matter to the United States District Court for the Northern District of New York. (See Paper 7, p. 1-3)

DISCUSSION

In federal question cases, venue is governed by 28 U.S.C. § 1391(b), which allows for a civil action to be brought in

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b) (2003). On a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(3), a plaintiff bears the burden of demonstrating proper venue. See D'Anton Jos, S.L. v. Doll

Factory, 937 F. Supp. 320, 321 (S.D.N.Y. 1996).

Plaintiff does not demonstrate the applicability of any § 1391(b) subsections. First, no Defendants reside in Vermont. Second, the events and omissions giving rise to the claim did not occur in Vermont. In fact, Plaintiff's complaint clearly indicates all of the events underlying his claim occurred outside Vermont, in New York State. Third, even assuming subsection (2) did not counsel so strongly in favor of venue in New York, Plaintiff does not demonstrate that a single Defendant is found in Vermont.

Instead, Plaintiff's only response is that venue is proper in Vermont because he claims he cannot receive a fair trial in New York. (See Paper 12, p. 1) This argument lacks merit. Consequently, venue in this district is improper. See Schaeffer v. Village of Ossining, 58 F.3d 48, 50 (2d Cir. 1995) (noting that venue was improper in district where no defendants resided and none of the events giving rise to the claim occurred.).

CONCLUSION

Defendants' Motion to Dismiss is GRANTED.

SO ORDERED.

Dated at Brattleboro, Vermont this ____ day of January,
2004.

J. Garvan Murtha, U.S. District Judge

